CONSTITUTIONAL LAW.—DUE PROCESS OF LAW.—BANKING.—GUARANTY FUND.—The Nebraska act of March 25, 1909, (Laws Neb. 1909, C. 10, p. 66) prohibits individuals from engaging in the banking business unless they do so through the agency of a corporation, it also makes the right to engage in such business depend upon an enforced contribution to a separate fund, known as the "depositors' guaranty fund," and to be used to pay the depositors of banks organized in the state which shall become insolvent. *Held,* on demurrer to a bill seeking to enjoin the enforcement of the act, that it is in conflict with the constitution of the state (§3, Art. I) "No person shall be deprived of life, liberty or property without due process of law," and the Constitution of the United States (§1, 14th Amendment), "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law." *First State Bank of Holstein, Neb., et al.* v. *Shallenberger, Governor, et al.* (1909), — C. C. D. Neb., Lincoln Div. —, 172 Fed. 999.

Laws which prohibit a large class of citizens from enjoying or following a lawful business deprive them of liberty and property without due process of law. *Slaughter-House Cases,* 16 Wall. 36, 116, 122, 21 L. Ed. 394. The liberty intended by the fourteenth amendment includes the right of the citizen to use and enjoy in lawful ways all of his faculties, to live and work where he will, to follow any avocation and livelihood he may choose. *Allgeyer* v. *Louisiana,* 165 U. S. 578, 17 Sup. Ct. 427, 41 L. Ed. 832. To the same effect are *Butchers' Union etc. Co.* v. *Crescent etc. Co.,* 111 U. S. 746, 4 Sup. Ct. 652, 28 L. Ed. 585. The right to engage in banking was a recognized common law right: see *Bank of Augusta* v. *Earle,* 13 Pet. 519, 10 L. Ed. 274; *Bank of California* v. *City of San Francisco,* 142 Cal. 276, 75 Pac. 832, 64 L. R. A. 918, 100 Am. St. Rep. 130. It is well settled that a state cannot under color of law, as by taxation or the method employed in this case, take the property of one citizen and give it to another. *Loan Association* v. *Topeka,* 20 Wall. 655, 23 L. Ed. 455; *Parkersburg* v. *Brown,* 106 U. S. 487, 1 Sup. Ct. 442, 27 L. Ed. 238; *Mich. Sugar Co.* v. *Auditor General,* 124 Mich. 674, 83 N. W. 625, 56 L. R. A. 329, 83 Am. St. Rep. 354, and many others.

CONSTITUTIONAL LAW.—VESTED RIGHTS.—RIGHTS IN NAVIGABLE AND NON-NAVIGABLE WATERS.—DUE PROCESS OF LAW.—The Des Plaines River in Illinois, which was non-navigable, was declared navigable by an act of the legislature of Illinois (Laws Adj. Sess. 1907, p. 32). On an information in the nature of a bill in equity to restrain defendant from erecting a dam across the river, and to cause the removal of that part of the dam already constructed, *Held,* the act (Laws Adj. Sess. 1907, p. 32) is ineffective to deprive the riparian owners of vested property rights existing in reference to the stream in its natural state and the bill should be dismissed. *People* v. *Economy Light & Power Co.* (1909), — Ill. —, 89 N. E. 760.

The legislature by such an act could not deprive the riparian owners of their vested rights. The river was private property and the legislature could not divest the owners by simply calling a stream navigable when as a matter

of fact it was not. *Murray* v. *Preston,* 106 Ky. 561, 50 S. W. 1095, 90 Am. St. Rep. 232. The legislature of a state may determine whether a stream shall be considered a public highway or not, yet if it is not one the legislature cannot make it one by a simple declaration that it is one, since it is private property which the legislature cannot appropriate to a public use without compensation. COOLEY'S CONSTITUTIONAL LIMITATIONS, Ed. 5, p. *591; *Walker* v. *Board of Public Works,* 16 Ohio 540; *Olive* v. *State,* 86 Ala. 88, 5 South. 653, 4 L. R. A. 33; *Yates* v. *Milwaukee,* 10 Wall. 497, 19 L. Ed. 984. Owners cannot be deprived of property rights without compensation by artificial additions to the waters of a stream whereby it is rendered navigable. *Thunder Bay Booming Co.* v. *Speechly,* 31 Mich. 336, 18 Am. Rep. 184; *Druley* v. *Adam,* 102 Ill. 177. The navigability of a stream is to be determined with reference to its natural condition. *Hall* v. *Lacey,* 3 Grant. Cas. (Pa.) 264; *U. S.* v. *Rio Grande Dam & Irrigation Co.,* 174 U. S. 690, 19 Sup. Ct. 770, 43 L. Ed. 1136; *In re The Daniel Ball,* 10 Wall. 557, 19 L. Ed. 999.

CONTRACTS.—PERFORMANCE OF BUILDING CONTRACT.—The plaintiff, a building contractor, engaged to duplicate a certain dwelling house for the defendant but before the painting had been begun the house was destroyed by fire without the fault of either party. In an action for the price of the house, failure of performance was interposed as a defense. *Held,* that the painting was an essential part of an inseverable contract and that the house was not completed ready for delivery before its destruction. *Annis* v. *Saugy* (1909), — R. I, —. 74 Atl. 81.

To entitle a contractor to recover upon a contract, inseverable in its nature, and which has not been strictly performed, it must appear either that there was an honest attempt to complete the contract according to its specifications, resulting in a substantial performance with only some slight deviations as to some particulars provided for, *or,* that there was an assent or acceptance, express or implied. *Jennings* v. *Camp,* 13 Johns 94; *Taft* v. *Montague,* 14 Mass. 282; *Kettle* v. *Harvey,* 21 Vt. 301; *Helm* v. *Wilson,* 4 Mo. 41; *White* v. *Oliver,* 36 Me. 92; *Elliott* v. *Caldwell,* 43 Minn. 357. Although there has not been sufficient performance to permit a recovery on the contract, still, in some instances, a recovery on a *quantum meruit* or *quantum valebant* is permitted where the benefits of such part performance have been accepted. *Hayward* v. *Leonard,* 7 Pick. 181; *Smith* v. *First Congregational Meeting House,* 8 Pick. 178; *Snow* v. *Ware,* 13 Metc. 42; *Lord* v. *Wheeler,* 1 Gray 282; *Aetna Iron and Steel Co.* .v *Kossuth County,* 79 Iowa 40; *Gallagher et al.* v. *Sharpless,* 134 Pa. St. 134. This theory of recovery has been extended to inseverable contracts of service under the authority of *Britton* v. *Turner,* 6 N. H. 481 and *Jordan* v. *Fitz,* 63 N. H. 227, but it has found but little favor in other states. See *Eldridge* v. *Rowe,* 2 Gilm. 91; *Olmstead* v. *Beale,* 19 Pick. 528; *Wooten* v. *Read,* 2 Smed. & M. 585.

CORPORATIONS.—CAPITAL STOCK.—TRUST FUND.—RIGHT OF BANK TO PURCHASE ITS OWN STOCK.—A solvent stockholder in an insolvent bank delivered to the president of the bank his shares of stock in the bank in payment